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UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA

Nicole Spreitzer,

Plaintiff,

vs.

Stingers Double D, LLC, Dale Hanson, and  
Dana Hanson,

Defendants.

No. \_\_\_\_\_

**COMPLAINT**

COMES NOW Plaintiff, Nicole Spreitzer (“Plaintiffs”), individually, by and through the undersigned attorney and sue the Defendants, Stingers Double D, LLC, Dale Hanson, and Dana Hanson (collectively, “Defendants”), and Plaintiff alleges as follows:

**PRELIMINARY STATEMENT**

1. This is an action for unpaid wages, liquidated damages, attorneys’ fees, costs, and interest under the Fair Labor Standards Act (“FLSA”), as amended, 29 U.S.C. § 216(b).

2. The FLSA was enacted “to protect all covered workers from substandard wages and oppressive working hours.” Barrentine v. Ark Best Freight Sys. Inc., 450 U.S. 728, 739 (1981). Under the FLSA, employers must pay all non-exempt employees an overtime rate of pay for all time spent working in excess their regular 40 hour workweeks. See 29

1 U.S.C. § 207(a). Under the FLSA, employers must pay all non-exempt employees a minimum  
2 wage of pay for all time spent working during their regular 40 hour workweeks. See 29  
3 U.S.C. § 206(a). The FLSA’s definition of the term “wage,” in turn, recognizes that under  
4 certain circumstances, an employer of tipped employees may credit a portion of its  
5 employees’ tips against its minimum wage obligation, a practice commonly referred to as  
6 taking a “tip credit.” See id. § 203(m).  
7

### 8 JURISDICTION AND VENUE

9 1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 29  
10 U.S.C. § 201, *et seq.* This civil action arises under the Constitution and law of the United  
11 States.  
12

13 2. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(ii) because acts  
14 giving rise to the claims of Plaintiff occurred within the District of Arizona, and Defendants  
15 regularly conduct business in and have engaged in the wrongful conduct alleged herein –  
16 and, thus, are subject to personal jurisdiction in – this judicial district.  
17

### 18 PARTIES

19 3. At all material times, Plaintiff is an individual residing in Maricopa County,  
20 Arizona, and is a former employee of Defendants.  
21

22 4. At all material times, Defendant Stingers Double D, L.L.C. was a limited  
23 liability company duly licensed to transact business in the State of Arizona. Defendant  
24 Stingers Double D, L.L.C. does business, has offices, and/or maintains agents for the  
25 transaction of its customary business in Maricopa County, Arizona.  
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1           5.       At all relevant times, Plaintiff was an employee of Stingers Double D, L.L.C.  
2       At all relevant times, Defendant Stingers Double D, L.L.C., acting through its agents,  
3       representatives, employees, managers, members, and/or other representatives had the  
4       authority to hire and fire employees, supervised and controlled work schedules or the  
5       conditions of employment, determined the rate and method of payment, and maintained  
6       employment records in connection with Plaintiff's employment with Defendant Stingers  
7       Double D, L.L.C. In any event, at all relevant times, Defendant Stingers Double D, L.L.C.  
8       was an employer subject to the Fair Labor Standards Act (FLSA) and employed Plaintiff.

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10           6.       At all relevant times, Defendant Dale Hanson owns, operates as a manager of,  
11       operates as a member of, and/or possesses a similar interest in Stingers Double D, L.L.C. At  
12       all relevant times, Defendant Dale Hanson had the authority to hire and fire employees,  
13       supervised and controlled work schedules or the conditions of employment, determined the  
14       rate and method of payment, and maintained employment records in connection with  
15       Plaintiff's Employment with Stingers Double D, L.L.C. In any event, at all relevant times,  
16       Defendant Dale Hanson was an employer subject to the FLSA and employed Plaintiff.

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19           7.       Upon information and belief, Defendant Dale Hanson was and continues to  
20       be a resident of Maricopa County, Arizona.

21           8.       At all relevant times, Defendant Dana Hanson owns, operates as a manager  
22       of, operates as a member of, and/or possesses a similar interest in Stingers Double D, L.L.C.  
23       At all relevant times, Defendant Dana Hanson had the authority to hire and fire employees,  
24       supervised and controlled work schedules or the conditions of employment, determined the  
25       rate and method of payment, and maintained employment records in connection with  
26       Plaintiff's Employment with Stingers Double D, L.L.C. In any event, at all relevant times,  
27       Defendant Dana Hanson was an employer subject to the FLSA and employed Plaintiff.

1 Plaintiff's Employment with Stingers Double D, L.L.C. In any event, at all relevant times,  
2 Defendant Dana Hanson was an employer subject to the FLSA and employed Plaintiffs.

3 9. Upon information and belief, Defendant Dana Hanson was and continues to  
4 be a resident of Maricopa County, Arizona.

5 10. Defendant Dale Hanson and Defendant Dana Hanson are spouses who are  
6 married. Defendants Dale Hanson and Dana Hanson have caused events to take place giving  
7 rise to this Complaint to which their marital community is fully liable.

8 11. At all relevant times, Plaintiffs were "employees" of Stingers Double D, L.L.C.,  
9 Dale Hanson, and Dana Hanson as defined by the FLSA, 29 U.S.C. § 201, *et seq.*

10 12. The provisions set forth in the FLSA, 29 U.S.C. § 201, *et seq.*, apply to Stingers  
11 Double D, L.L.C., Dale Hanson, and Dana Hanson.

12 13. At all relevant times, Stingers Double D, L.L.C., Dale Hanson, and Dana  
13 Hanson were and continue to be "employers" as defined by FLSA, 29 U.S.C. § 201, *et seq.*

14 14. Defendants individually and/or through an enterprise or agent, directed and  
15 exercised control over Plaintiff's work and wages at all relevant times.

16 15. Plaintiff, in her work for Defendants, were employed by an enterprise engaged  
17 in commerce that had annual gross sales of at least \$500,000.

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21 **NATURE OF THE CLAIM**

22 16. Defendants own and/or operate as Stingers Double D, L.L.C, an enterprise  
23 located in Maricopa County, Arizona.

24 17. Plaintiff had worked as a tipped employee for Defendants in Maricopa  
25 County, Arizona for approximately four months.

1           18. Plaintiff was hired on approximately January 1, 2013 and ceased employment  
2 with Defendants approximately July 31, 2014.

3           19. Pursuant to the FLSA, 29 U.S.C. § 203(m), and Arizona wage and hour law,  
4 employers may impose a tip credit on their tipped employees' wages of up to \$3.00 per hour,  
5 on the condition that, among other requirements, such employees have been informed by  
6 the employer of the provisions of 29 U.S.C. § 203(m).  
7

8           20. Defendants failed to inform Plaintiff of the provisions of 29 U.S.C. § 203(m)  
9 at any time over the duration of their employment with Defendants. As such, Defendants  
10 were not entitled to impose any tip credit upon Plaintiff's wages, and Defendants should  
11 have therefore paid the full Arizona minimum wage to Plaintiffs for all time Plaintiffs  
12 worked during the course of their regular 40-hour workweeks.  
13

14           21. As such, full minimum wage for such time is owed to Plaintiff for the entire  
15 time she was employed by Defendants.  
16

17           22. For the entire duration of Plaintiff Nicole Spreitzer's employment with  
18 Defendants, Defendants had a consistent policy and practice of requiring its employees to  
19 work well in excess of forty (40) hours per week without paying them time and a half for  
20 hours worked over forty (40) hours per week.

21           23. As a result of Defendants' failure to pay time and a half to Plaintiff for hours  
22 worked over forty (40) hours per week, Defendants violated 29 U.S.C. § 207(a).  
23

24           24. As such, Defendants must pay Plaintiff one-and-one-half times her regular  
25 rate of pay for work she performed for Defendants in excess of her regular 40-hour  
26 workweek.  
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1           25. Plaintiff is covered employees within the meaning of the Fair Labor Standards  
2 Act ("FLSA").

3           26. Plaintiff was a non-exempt employee.

4           27. Defendants refused and/or failed to properly disclose to or apprise Plaintiff of  
5 her rights under the FLSA.  
6

7           28. Defendants engaged in the regular practice of willfully failing to pay Plaintiff  
8 the applicable minimum wage for all time that Defendants suffered or permitted Plaintiff to  
9 work.

10           29. As a result of Defendants' willful failure to pay Plaintiff the applicable  
11 minimum wage for all time worked, Defendants paid Plaintiff less than the applicable  
12 minimum wage rate for such work that Plaintiff performed over the course of Plaintiff's  
13 regular workweeks.  
14

15           30. Defendants engaged in the regular practice of failing to accurately, if at all,  
16 record the time during which Defendants suffered or permitted Plaintiff to work. As such,  
17 Plaintiff's time records, if in existence, understate the duration of time each workweek that  
18 Defendants suffered or permitted Plaintiff to work.  
19

20           31. As a result of Defendants' willful failure to compensate Plaintiff the applicable  
21 minimum wage rate for such hours worked, Defendants have violated 29 U.S.C. § 206(a).  
22

23           32. Defendants knew that – or acted with reckless disregard as to whether – their  
24 failure to pay to Plaintiff the applicable minimum wage for all time the Defendants suffered  
25 or permitted Plaintiff to work, would violate federal and state law, and Defendants were  
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1 aware of the FLSA minimum wage requirements during Plaintiff's employment. As such,  
2 Defendants' conduct constitutes a willful violation of the FLSA.

3 33. Plaintiff's counsel conferred on multiple occasions with Defendants' counsel  
4 prior to filing this Complaint. In some of such conferrals, and in order to attempt to find a  
5 pre-litigation resolution to this matter, and in the event that the violations alleged within this  
6 Complaint are determined not to have been willful, Defendants, through counsel, agreed to a  
7 tolling the regular statute of limitations at April 27, 2013.

9 34. Defendants individually and/or through an enterprise or agent, directed and  
10 exercised control over Plaintiffs' work and wages at all relevant times.

11 35. Due to Defendants' illegal wage practices, Plaintiff is entitled to recover from  
12 Defendants compensation for unpaid wages, an additional equal amount as liquidated  
13 damages, interest, and reasonable attorney's fees and costs of this action under 29 U.S.C. §  
14 216(b).

15 36. Plaintiff has retained The Bendau Law Firm, PLLC to represent her in this  
16 litigation and has agreed to pay a reasonable fee for the services rendered in the prosecution  
17 of this action on her behalf.

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20 **COUNT ONE: FAIR LABOR STANDARDS ACT**  
21 **FAILURE TO PROVIDE NOTICE OF TIP CREDIT TO PLAINTIFFS**

22 37. Plaintiff realleges and incorporates by reference all allegations in all preceding  
23 paragraphs.

24 38. Defendants intentionally failed and/or refused to inform Plaintiff of the  
25 provisions of the "tip credit" and 29 U.S.C. § 203(m) and its supporting regulations.  
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1           39. Defendants intentionally failed and/or refused to pay Plaintiff the full  
2 minimum wage according to the provisions of the FLSA for each and every workweek that  
3 Plaintiff worked for Defendants, for the duration of her employment, in violation of 29  
4 U.S.C. § 206(a).

5           40. As such, full applicable minimum wage for such time Plaintiff worked is owed  
6 to Plaintiff for the entire time she were employed by Defendants.

7           41. Defendants knew that – or acted with reckless disregard as to whether – their  
8 failure to pay to Plaintiff the full minimum wage over the course of their employment would  
9 violate federal and state law, and Defendants were aware of the FLSA minimum wage  
10 requirements during Plaintiff's employment. As such, Defendants' conduct constitutes a  
11 willful violation of the FLSA.

12           42. Plaintiff is therefore entitled to compensation for the full minimum wage at an  
13 hourly rate, to be proven at trial, plus an additional equal amount as liquidated damages,  
14 together with interest, reasonable attorney's fees, and costs.

15           **WHEREFORE**, Plaintiff, Nicole Spreitzer, individually, respectfully requests that  
16 this Court grant relief in Plaintiff's favor, and against Defendants Stingers Double D, L.L.C.,  
17 Dale Hanson, and Dana Hanson for compensation for unpaid minimum wages, plus an  
18 additional equal amount as liquidated damages, prejudgment and post-judgment interest,  
19 reasonable attorney fees, costs, and disbursements of this action, and any additional relief  
20 this Court deems just and proper.

21                           **COUNT TWO: FAIR LABOR STANDARDS ACT**  
22                           **FAILURE AND/OR REFUSAL TO PAY OVERTIME**

23           COMES NOW, Plaintiff, Nicole Spreitzer, individually, stating:  
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1           43. Plaintiff realleges and incorporates by reference all allegations in all preceding  
2 paragraphs.

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4           44. At all relevant times, Defendants have been and continue to be employers and  
5 enterprise engaged in commerce or the production of goods for commerce, within the  
6 meaning of the FLSA, 29 U.S.C. §§ 203(d) and (s), respectively.

7           45. At all relevant times, Defendants employed Plaintiff, and she was employed by  
8 Defendants, within the meaning of the FLSA, 29 U.S.C. §§ 203(e) and (g), respectively.

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10          46. While employed by Defendants, Plaintiff regularly and consistently worked  
11 multiple hours of overtime per week, and Defendants did not pay to Plaintiff one-and-one-  
12 half times her regular rate of pay.

13          47. As a result, Defendants have intentionally failed and/or refused to pay  
14 Plaintiff overtime according to the provisions of the FLSA.

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16          48. Defendants further have engaged in a widespread pattern and practice of  
17 violating the provisions of the FLSA by failing to pay Plaintiff in accordance with 29 U.S.C.  
18 § 207.

19          49. For example, during the workweek beginning August 15, 2013, Plaintiff was  
20 scheduled, and worked, for more than 40 hours. Defendant failed and/or refused to  
21 compensate Plaintiff at one-and-one-half times her regular rate of pay for all time she  
22 worked in excess of forty (40) hours.

23  
24          50. Plaintiff believes and therefore avers that Defendants owe her similar unpaid  
25 overtime wages for all other pay periods for the duration of her employment.

1           51.     Additionally, while employed by Defendants, Defendants regularly and  
2 consistently suffered or permitted Plaintiff to work overtime hours outside of normal  
3 business hours and on weekends, yet Defendants did not pay Plaintiff any wage whatsoever  
4 for such time she worked. As a result, Defendants additionally failed or refused to  
5 compensate Plaintiff one-and-one-half times her regular rate of pay for hours she worked  
6 outside of normal business hours and on weekends.  
7

8           52.     As a result, Defendants have intentionally failed and/or refused to pay  
9 Plaintiff overtime according to the provisions of the FLSA.  
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11           53.     Although at this stage, Plaintiff is unable to state the exact amount owed for  
12 all time worked during the course of her employment, Plaintiff believes that such  
13 information will become available during the course of discovery. Furthermore, when an  
14 employer fails to keep complete and accurate time records, employees may establish the  
15 hours worked by their testimony, and the burden of overcoming such testimony shifts to the  
16 employer.  
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18           54.     Defendants knew that – or acted with reckless disregard as to whether – their  
19 refusal or failure to properly compensate Plaintiff over the course of her employment would  
20 violate federal and state law, and Defendants were aware of the FLSA minimum wage  
21 requirements during Plaintiff's employment. As such, Defendants' conduct constitutes a  
22 willful violation of the FLSA.  
23

24           55.     Defendants have and continue to willfully violate the FLSA by not paying  
25 Plaintiff a wage equal to one and one half times Plaintiff's regular rate of pay for all time  
26 spent performing labor for Defendants in excess of her regular 40-hour workweek.  
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1           56. Defendants individually and/or through an enterprise or agent, directed and  
2 exercised control over Plaintiff's work and wages at all relevant times.

3           57. Plaintiff, in her work for Defendant, was employed by an enterprise engaged  
4 in commerce that had annual gross sales of at least \$500,000.

5           58. As a result of Defendants failure or refusal to pay Plaintiff a wage equal to one  
6 and one half times Plaintiff's regular rate of pay for work she performed for Defendants in  
7 excess of her regular 40-hour workweek, Defendants violated 29 U.S.C. § 207(a). Plaintiff is  
8 therefore entitled to compensation of one-and-one-half times her regular rate of pay, to be  
9 proven at trial, plus an additional equal amount as liquidated damages, together with interest,  
10 reasonable attorney's fees, and costs.  
11

12           **WHEREFORE**, Plaintiff, Nicole Spreitzer, individually, respectfully requests that  
13 this Court grant relief in Plaintiff's favor, and against Defendants Stingers Double D, L.L.C.,  
14 Dale Hanson, and Dana Hanson for overtime compensation in the amount due to her for all  
15 of Plaintiff's time worked in excess of forty (40) hours per work week at an amount equal to  
16 one-and-one-half times Plaintiff's regular rate while working for Defendants, plus an  
17 additional equal amount as liquidated damages, prejudgment and post-judgment interest,  
18 reasonable attorney fees, costs, and disbursements of this action, and any additional relief  
19 this Court deems just and proper.  
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22                   **COUNT THREE: FAIR LABOR STANDARDS ACT**  
23                   **REQUIREMENT TO REIMBURSE WALKOUTS AND REGISTERS**  
24                   **SHORTAGES**

25           COMES NOW, Plaintiff, Nicole Spreitzer, individually, stating:  
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59. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs

60. While Defendants employed Plaintiff, Defendant had a policy requiring its employees to reimburse Defendant for walkouts, register shortages, and breakage from their own tips and other earned wages.

61. Plaintiff was subject to this policy each and every workweek she was employed by Defendants.

62. In a given workweek, Defendant required Plaintiff to pay for walkouts, register shortages, and breakage, despite being paid at the tip credit rate. As a result, Plaintiff's wage feel below the tip credit rate.

63. As a result, Defendants disallowed entirely from taking the tip credit and Plaintiff is entitled to full minimum wage for all time worked.

**WHEREFORE**, Plaintiff, Nicole Spreitzer, individually, respectfully requests that this Court grant relief in Plaintiff's favor, and against Defendants Stingers Double D, L.L.C., Dale Hanson, and Dana Hanson for unpaid minimum wages while working for Defendants, plus an additional equal amount as liquidated damages, prejudgment and post-judgment interest, reasonable attorney fees, costs, and disbursements of this action, and any additional relief this Court deems just and proper.

## JURY TRIAL DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable.

RESPECTFULLY SUBMITTED this 6<sup>th</sup> Day of August, 2015.

THE BENDAU LAW FIRM, PLLC

By: /s/ Clifford P. Bendau, II

Clifford P. Bendau, II

Attorney for Plaintiff

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